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12 Attorneys for Archer Norris, a
13 Professional Law Corporation, Debtor
14 in-Possession

15 **UNITED STATES BANKRUPTCY COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN FRANCISCO DIVISION**

18 In re:
19 ARCHER NORRIS, a Professional
20 Law Corporation,
21
22 Debtor-in-Possession.

CASE NO.: 18-30924-HLB

Adv. Proc. No.:

Chapter 11

23 ARCHER NORRIS, a Professional
24 Law Corporation,

25 Plaintiff,

26 v.

27 RALPH CALEDERON, an individual,

28 Defendant.

COMPLAINT FOR BREACH OF
CONTRACT; SERVICES RENDERED;
OPEN BOOK ACCOUNT; ACCOUNT
STATED

1 Plaintiff Debtor-in-Possession Archer Norris, a Law Corporation (“Plaintiff” or “Archer
2 Norris”), complains against Defendant Ralph Calderon (“Defendant”), and alleges as
3 follows:

4 **THE PARTIES**

5 1. Plaintiff is, and at all times relevant hereto was, a California professional law
6 corporation with its principal place of business in Walnut Creek, California.

7 2. Defendant is, and was at all times relevant hereto, a resident of the State of
8 California. Defendant hired Plaintiff to perform legal services and incur costs on his
9 behalf.

10 **JURISDICTION AND VENUE**

11 1. This Court has subject matter jurisdiction over this adversary proceeding
12 pursuant to 28 U.S.C. §1334(b) of the United States Bankruptcy Code.

13 2. This is a non-core proceeding. Archer Norris consents to entry of final
14 orders and/or judgment by this Court.

15 3. This is the proper venue over the action pursuant to 28 U.S.C. §1409(a) of
16 the United States Bankruptcy Code.

17 4. This Court has personal jurisdiction over Defendant, in that, among other
18 things, Defendant resides in the State of California.

19 **GENERAL ALLEGATIONS**

20 5. Defendant engaged Archer Norris to perform legal services and incur costs
21 on his behalf. Defendant agreed to pay for those services and costs as billed.

22 6. On April 2, 2017, Archer Norris and Defendant entered into a Legal Services
23 Engagement Agreement (the “Agreement”) with respect to said legal services and costs.
24 Defendant agreed to the terms of the Agreement and agreed to be liable for all obligations
25 under the Agreement.

26 7. Archer Norris provided legal services for Defendant and incurred costs on
27 his behalf, for which regular bills were tendered to Defendant for payment.
28

1 8. Defendant failed to make payment on the bills tendered to him by Archer
2 Norris in the principal amount of \$17,952.92.

3 9. On August 22, 2018, Archer Norris filed a voluntary petition in this Court
4 under Chapter 11 of Title 11 of the United States Code.

5 10. On February 21, 2019, this Court entered an Order Confirming Joint Plan of
6 Liquidation Proposed by the Debtor and the Official Committee of Unsecured Creditors
7 (Dated: February 12, 2019).

8 11. Archer Norris is serving Defendant concurrently herewith a Notice of
9 Defendant's Right to Arbitration pursuant to California Business & Professions Code
10 §6201, *et. seq.*, attached hereto as Exhibit A.
11

12 **FIRST CAUSE OF ACTION**
13 **(Breach of Contract)**
14 **(Against Defendant)**

15 12. Plaintiff repeats and incorporates by reference paragraphs 1 through 11
16 above, as though fully set forth herein.

17 13. On April 2, 2017, Defendant engaged Archer Norris to provide legal services
18 and incur costs on his behalf, pursuant to the terms of the Agreement. Defendant agreed to
19 be liable for all of his obligations under the Agreement.

20 14. Archer Norris provided legal services and incurred costs on Defendant's
21 behalf, pursuant to the terms of the Agreement.

22 15. For all services, labor, work performed, and related costs, per the terms of
23 the Agreement, Plaintiff submitted invoices to Defendant, which included itemizations of
24 the specific services provided and costs incurred.

25 16. Defendant breached the Agreement with Archer Norris by failing and
26 refusing to make payments when due for the legal services provided to him and for costs
27 incurred in connection therewith, despite agreement to do so.
28

17. Archer Norris fully performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of the Agreement, except to the extent performance of such covenants, obligations and/or conditions was waived, prevented, otherwise satisfied or excused.

18. As a result of Defendant's breach of the Agreement and his failure to pay the amounts due under the Agreement, there is now due, owing and immediately due and payable from Defendant to Plaintiff the sum of \$17,952.92, plus accruing interest in accordance with proof at trial or time of entry of judgment.

19. Although Archer Norris has made repeated demands on Defendant to pay the amount due and owing to Archer Norris, Defendant has failed and refused, and continues to fail and refuse to pay Archer Norris.

20. As a direct result of Defendant's wrongful and unlawful conduct in the manner described above, Archer Norris has sustained damages, in a sum of at least \$17,952.92, plus interest.

21. As a further result of Defendant's wrongful and unlawful conduct in breaching the Agreement, Archer Norris is entitled to interest at the rate of ten percent (10%) per annum.

SECOND CAUSE OF ACTION
(Services Rendered)
(Against Defendant)

22. Plaintiff repeats and incorporates by reference paragraphs 1 through 21 above, as though fully set forth herein.

23. Defendant requested, by words and/or conduct, that Archer Norris perform services and labor, and incur related costs for the benefit of Defendant.

24. Archer Norris performed the requested services, provided labor, and incurred related costs as requested by Defendant.

1 25. Defendant has not paid Plaintiff for the services rendered, work performed,
2 labor provided, and related costs incurred by Archer Norris.

3 26. Defendant is indebted to Archer Norris for services rendered, work
4 performed, labor provided, and related costs incurred by Plaintiff at Defendant's request,
5 the reasonable value of which Defendant agreed to pay Archer Norris.

6 27. The reasonable value of such services rendered and work performed is the
7 sum of \$17,952.92.

8 28. Defendant has failed and refused to pay the amount of \$17,952.92 incurred to
9 Archer Norris for services rendered, work performed, labor provided, and related costs
10 incurred by Plaintiff at Defendant's request despite Plaintiff's demand for payment of
11 those sums.

12 29. As to the \$17,952.92 owed for the services rendered to Defendant by Archer
13 Norris, Plaintiff is entitled to pre-judgment interest at the legal pre-judgment rate on such
14 amounts and from such dates as may be determined according to proof at trial or time of
15 entry of judgment at the rate of 10% per annum calculated and accruing on a monthly
16 basis.

17
18 **THIRD CAUSE OF ACTION**
19 **(Open Book Account)**
20 **(Against Defendant)**

21 30. Plaintiff repeats and incorporates by reference paragraphs 1 through
22 29 above, as though fully set forth herein.

23 31. Since 2017, Archer Norris and Defendant had financial transactions
24 comprised of Plaintiff performing services and work, providing labor, and incurring related
25 costs at the request of Defendant for which Plaintiff provided invoices for payment thereof.

26 32. On a regular basis, Archer Norris billed Defendant. Defendant became
27 indebted on an open book account for legal services rendered and costs incurred.

28 33. Archer Norris keeps an account of the debits and credits involved.

1 34. Defendant owes Archer Norris money in the amount of \$17,952.92 on the
2 account maintained by Plaintiff for such transactions.

3 35. Defendant is indebted to Plaintiff on an open book account for money due in
4 the sum of \$17,952.92 for services rendered, work performed, labor provided, and related
5 costs incurred by Plaintiff to Defendant at Defendant's request, and for which Defendant
6 agreed to pay said sum, plus interest.

7 36. Defendant has failed and refused to pay the \$17,952.92 owed on the account
8 incurred by Defendant to Plaintiff for services rendered, work performed, labor provided,
9 and related costs incurred by Plaintiff, at Defendant's request despite Plaintiff's demand
10 for payment of those sums to Defendant.

11 37. As to the \$17,952.92 owed for the services rendered to Defendant by Archer
12 Norris, Plaintiff is entitled to pre-judgment interest at the legal pre-judgment rate on such
13 amounts and from such dates as may be determined according to proof at trial or time of
14 entry of judgment at the rate of 10% per annum calculated and accruing on a monthly
15 basis.
16

17 **FOURTH CAUSE OF ACTION**
18 **(Account Stated)**
19 **(Against Defendant)**

20 38. Plaintiff repeats and incorporates by reference paragraphs 1 through
21 37 above, as though fully set forth herein.

22 39. Since 2017, an account was stated between Plaintiff and Defendant, wherein
23 it was agreed that Defendant was indebted to Plaintiff in the sum of \$17,952.92. Neither
24 the whole nor any part of the above sum has been paid, although repeated demand has
25 been made by Plaintiff to Defendant for payment of such sum.

26 40. There is now due, owing, and unpaid from Defendant to Plaintiff, after
27 deducting all just credits and offsets, the sum of \$17,952.92, together with interest thereon
28 at the legal pre-judgment rate on such amounts and from such dates as may be determined

1 according to proof at trial or time of entry of judgment at the rate of 10% per annum
2 calculated and accruing on a monthly basis.
3

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment as follows:

- 6 1. For the sum of \$17,952.92, plus interest on such amounts and from such
7 dates as may be determined according to proof at trial or time of entry of judgment;
8 2. For costs of suit incurred herein; and
9 3. For such other and further relief as the Court deems just and proper.
10

11
12 Dated: June 12, 2019

DIAMOND MCCARTHY LLP

By: /s/ Christopher D. Sullivan

14 Christopher D. Sullivan
15 Attorneys for Archer Norris, a
16 Professional Law Corporation,
Debtor in-Possession
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EXHIBIT A



Notice of Client's* Right To Fee Arbitration

Client's Name: Ralph Calderon
 Client's Address: Unknown
 Client's City, State & Zip: _____

Attorney's Name: Archer Norris, a Professional Law Corporation
 Attorney's Address: c/o Diamond McCarthy LLP, 150 California Street, Suite 2200
 Attorney's City, State & Zip: San Francisco, CA 94111

You have an outstanding balance for fees and/or costs for professional services in the amount of \$ 17,952.92
 charged to you in the matter of C0506-001 - legal advice

☒ I have filed a lawsuit against you in the: Court: United States Bankruptcy Court Case No.: To be provided
 Address: 450 Golden Gate Avenue, San Francisco, CA 94102

☐ I have filed an arbitration proceeding against you with the: Agency: _____ Case No.: _____
 Address: _____

☐ No lawsuit or arbitration proceeding has yet been filed but may be filed if we do not resolve this claim.

You have the right under Sections 6200-6206 of the California Business and Professions Code to request arbitration of these fees or costs by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and clients.

You will LOSE YOUR RIGHT TO ARBITRATION UNDER THIS PROGRAM if:

1. YOU DO NOT FILE A WRITTEN APPLICATION FOR ARBITRATION WITH THE BAR ASSOCIATION WITHIN **30 DAYS** FROM RECEIPT OF THIS NOTICE USING A FORM PROVIDED BY THE LOCAL BAR ASSOCIATION OR STATE BAR OF CALIFORNIA FEE ARBITRATION PROGRAM; OR
2. YOU RECEIVE THIS NOTICE AND THEN EITHER (1) ANSWER A COMPLAINT I HAVE FILED IN COURT; OR (2) FILE A RESPONSE TO ANY ARBITRATION PROCEEDING THAT I HAVE INITIATED FOR COLLECTION OF FEES, AND/OR COSTS, WITHOUT FIRST HAVING SERVED AND FILED A REQUEST FOR ARBITRATION UNDER THIS PROGRAM; OR
3. YOU FILE AN ACTION OR PLEADING IN ANY LAWSUIT WHICH SEEKS A COURT DECISION ON THIS DISPUTE OR WHICH SEEKS DAMAGES FOR ANY ALLEGED MALPRACTICE OR PROFESSIONAL MISCONDUCT.

I have the right to file a lawsuit against you if you give up your right to mandatory fee arbitration. If I have already filed a lawsuit or arbitration, you may have the lawsuit or arbitration postponed after you have filed an application for arbitration under this program.

I have determined that:

- ☒ There is a local program which may have jurisdiction to hear this matter. The arbitration program listed below is available to you:

Name of Program: Bar Association of San Francisco, Fee Disputes Program
 Address: 301 Battery Street, 3rd Floor
 City, State & Zip: San Francisco, CA 94111
 Telephone No.: (415) 982-1600

You may wish to check the State Bar's website at www.calbar.ca.gov to see if there are other programs available to you.

- ☐ There is no approved local program which has jurisdiction to hear this matter.

The State Bar of California will conduct fee arbitration (1) where there is no approved local program, (2) where there is a local program but it declines for any reason to hear your case, (3) where there is a local program and you wish non-binding arbitration of this dispute and the local program refuses to allow non-binding arbitration of your dispute, or (4) if you believe you cannot receive a fair hearing before the local bar named above. If you need assistance, please contact Mandatory Fee Arbitration, State Bar of California, 180 Howard Street, San Francisco, CA 94105-1639, (415) 538-2020.

Date: June 12, 2019 Attorney: /s/ Christopher D. Sullivan, Attorney for Archer Norris